



City of NORFOLK

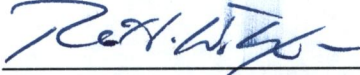
C: Dir., Planning & Community Development

To the Honorable Council
City of Norfolk, Virginia

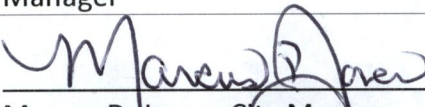
June 24, 2014

From: George M. Homewood, AICP, CFM
Director of Planning

Subject: Amend section 15-2, 15-3,
15-5, 15-8 and 15-9 Erosion and
Sediment Control Ordinance

Reviewed: 
Ronald H. Williams, Jr., Assistant City
Manager

Ward/Superward: Citywide

Approved: 
Marcus D. Jones, City Manager

Item Number: R-2

I. **Staff Recommendation:** Approval

II. **Applicant:** Department of City Planning

III. **Description**

Amendment of Norfolk's erosion and sediment control ordinance to comply with new and revised definitions promulgated by Virginia Department of Environmental Quality.

IV. **Analysis**

- The existing erosion and sediment control ordinance must be updated to be consistent with new Commonwealth of Virginia standards and definitions.
 - Laws for erosion and sediment control have been consolidated into the new stormwater regulations.
 - Definitions and procedures have been updated to properly reference the new consolidated state erosion and sediment control and stormwater laws.
- Separate land disturbance permits will now be required for all development sites other than single-family.
 - Land disturbance permits are administered by the Bureau of Environmental Services in the Department of City Planning.
 - Land disturbance permits can now be issued in advice of site plan approval with this change, this will improve the development process in Norfolk.

V. **Financial Impact**

A new land disturbance fee will be required for all site plan projects.

VI. Environmental

- City Code revisions should have a positive environmental impact on development with the additional stormwater management requirements which will go into effect July 1, 2014.
- Separating the land disturbance permit from final site plan approval will allow projects to get underway while completing review of site plan details unrelated to land disturbance.

**VII. Community Outreach/Notification
Coordination/Outreach**

This request has been coordinated with the Departments of City Planning, Public Works and the City Attorney's Office.

Supporting Material from the Department of City Planning

- Text Amendment Ordinance

Form and Correctness Approval:

By

Office of the City Attorney

NORFOLK, VIRGINIA

Contents Approved:

By

DEPT. PLANNING

ORDINANCE No.

AN ORDINANCE TO AMEND AND REORDAIN SECTIONS 15-2, 15-3, 15-5, 15-8 AND 15-9 OF THE NORFOLK CITY CODE **SO AS TO** CONFORM WITH THE STORMWATER DESIGN AND CONSTRUCTION MANUAL INCORPORATED IN CHAPTER 41.2.

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BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That Section 15-2 of the Norfolk City Code, 1979, is hereby amended and reordained to read as follows:

Sec. 15-2. Definitions.

As used in this chapter, unless the context requires a different meaning, the following definitions shall have the meanings set out below:

Agreement in lieu of a plan: A contract between the City and the owner that specifies conservation measures that must be implemented in the construction of a single-family residence; this contract may be executed by the City in lieu of a formal site plan.

Applicant: Any person submitting an erosion and sediment control plan for approval or requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.

Board: Virginia Department of Soil and Water Conservation Board.

Chesapeake Bay Preservation Area or CBPA: Any land designated by the city pursuant to Part III of the Chesapeake Bay Preservation Area Designation and Management Regulations, 9 VAC 10-20-70, and section 62.1-44.15:52 of the Code of Virginia. A Chesapeake Bay Preservation Area consists of a resource protection area, intensely developed area, and a resource management area. The general limits of the CBPA are shown on

the official zoning map and the general requirements pertaining to CBPA's are detailed in section 11-2 of the zoning ordinance.

Construction footprint: The area of impervious surface, including, but not limited to, buildings, roads and drives, parking areas, sidewalks, and the area necessary for construction of such improvements.

Erosion and sediment control plan, conservation plan or plan: A document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory, and management information with needed interpretations and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions and all information deemed necessary by the plan-approving authority to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.

Erosion impact area: An area of land not associated with current land-disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land ten thousand (10,000) square feet or less used for residential purposes or to shorelines where the erosion results from wave action or other coastal processes.

Land disturbance or land-disturbing activity: Any man-made change to the land surface, including, but not limited to, clearing, grading, excavating, transporting and filling of land, or other construction activities which would disturb the natural vegetation or the existing contours of the land, which may result in soil erosion from water or wind and the movement of sediments into public or private storm drainage facilities, state waters, or onto lands in the commonwealth.

Natural channel design concepts: The utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its bankfull bench and its floodplain.

Owner: The owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a property.

Peak flow rate: The maximum instantaneous flow from a given storm condition at a particular location.

Permittee: The person to whom the permit authorizing land-disturbing activities is issued or the person who certifies that the approved erosion and sediment control plan will be followed.

Person: Any individual, landowner, occupier, owner's agent, contractor, subcontractor, permittee, equipment operator, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative county, city, town or other political subdivision of the commonwealth, any interstate body, or any other legal entity.

Responsible Land Disturber: An individual from the project or development team, who will be in charge of and responsible for carrying out a land disturbing activity covered by an approved plan or agreement in lieu of a plan, who (i) holds a Responsible Land Disturber certificate of competence, (ii) holds a current certificate of competence from the Board in the areas of Combined Administration, Program Administration, Inspection, or Plan Review, (iii) holds a current Contractor certificate of competence for erosion and sediment control, or (iv) is licensed in Virginia as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (Sec 54.1-400 et seq.) of Chapter 4 of Title 54.1.

Runoff volume: The volume of water that runs off the land development project from a prescribed storm event.

Virginia Erosion and Sediment Control Program, or VESCP, means a program approved by the Board that has been established by a VESCP authority for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable as local ordinances, rules, permit requirements, annual standards and

specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement where authorized in this article, and evaluation consistent with the requirements of this article and its associated regulations.

Virginia Erosion and Sediment Control Program authority, or VESCP authority, means an authority approved by the Board to operate a Virginia Erosion and Sediment Control Program. An authority may include a state entity, including the Department; a federal entity; a district, county, city, or town; or for linear projects subject to annual standards and specifications, electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to Section 15.2-5102.

State waters: All waters on the surface and under the ground wholly or partially within or bordering the commonwealth or within its jurisdictions.

Water quality volume: The volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project.

Section 2:- That Section 15-3 of the Norfolk City Code, 1979, is hereby amended and reordained to read as follows:

Sec. 15-3. Minimum standards.

The minimum standards for the control of erosion and sediment in the city shall be those standards in the regulations adopted in the State Erosion and Sediment Control Program and in the Virginia Erosion and Sediment Control Handbook.

- (a) In accordance with Section 62.1-44.15:52 of the Code of Virginia, stream restoration and relocation projects that incorporate natural channel design concepts are not man-made channels and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to this section or Sections 62.1-44.15:54. or 62.1-44.15:65.
- (b) Any plan approved prior to July 1, 2014, that provides for stormwater management that addresses any flow

rate capacity and velocity requirements for natural or man-made channels shall satisfy the flow rate capacity and velocity requirements for natural or man-made channels if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5, 2, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to Section 62.1-44.15:54 or Section 62.1-44.15:65 of the Act. For plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements of this subsection shall be satisfied by compliance with water quantity requirements in the Stormwater Management Act (Section 62.1-44.15.24 et. seq.) and attendant regulations unless such land-disturbing activities are in accordance with the grandfathering provisions of the Virginia Stormwater Management Program (VSMP) Permit Regulations as defined in any regulations promulgated pursuant to this section or Sections 62.1-44.15:54. or 62.1-44.15:65.

Section 3:- That Section 15-5 of the Norfolk City Code, 1979, is hereby amended and reordained to read as follows:

Sec. 15-5. Exemptions from chapter.

The provisions of this chapter shall not apply to the following:

- (1) Minor land-disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work.
- (2) Individual service connections.

- (3) Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system. However, where the installation of septic tank lines or drainage fields are in a Chesapeake Bay Preservation Area, this exemption is not applicable.
- (4) Repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other related structures and facilities of a railroad company.
- (5) Disturbed land areas of less than twenty-five hundred (2,500) square feet in size.
- (6) Emergency work to protect life, limb or property, and emergency repairs; provided, that if the land-disturbing activity would have required an approved erosion and sediment control plan if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of this article.
- (7) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles.
- (8) Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard-surfaced road, street or sidewalk.
- (9) Surface or deep mining.
- (10) Exploration or drilling for oil and gas.
- (11) Shoreline erosion control projects on tidal waters when all of the land disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission, or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this ordinance.
- (12) Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot operations, or as additionally set forth by the Board in regulation, including engineering operations as follows: construction of terraces,

terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with Chapter 11 (Sec. 10.1-1100 et seq.) of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in Subsection B of Section 10.1-1163;

- (13) Agricultural engineering operations, including but not limited to the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act (Sec. 10.1-604 et seq.), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation.

Section 4:- That Section 15-8 of the Norfolk City Code, 1979, is hereby amended and reordained to read as follows:

Sec. 15-8. Submission and approval of erosion and sediment control plans for land-disturbing activity permit.

- (a) The director of the department of public works, or his designee, shall review and approve erosion and sediment control plans and issue land-disturbing permits in cases of land-disturbing activity in public rights-of-way and drainage easements, and in cases of installation of stormwater best management practices and other construction projects managed by the director of the department of public works which result in land-disturbing activity.
- (b) Except as otherwise provided in paragraph (a) above, the director of city planning or his designee, shall review and approve erosion and sediment control plans and issue land-disturbing permits. Additionally, where site plan review is required as provided for in the zoning ordinance of the City of Norfolk, as amended, an erosion and sediment control plan shall be submitted to the bureau of zoning services in the department of city planning when the site plan is submitted. The erosion and sediment control plan shall be forwarded for review and approval to the manager of the bureau of environmental services, or authorized agent, as part of the

site plan review process. The manager of the bureau of environmental services, or authorized agent, may review and approve the erosion and sediment control plan and issue a land-disturbing activity permit prior to site plan approval.

- (c) The manager of the bureau of environmental services may develop, in consultation with the code official, standardized agreements in lieu of a plan for land-disturbing activities. The code official, or authorized agent, shall have authority to utilize agreements in lieu of a plan without additional approval by the manager of the bureau of environmental services. When approved, the agreement in lieu of a plan shall be deemed to be the land-disturbing activity permit.
- (d) The appropriate city official, as set forth in paragraphs (a) through (c) above, shall, within thirty (30) days of the receipt of a plan, approve any such plan if he determines that the plan meets the requirements of this article and if the person responsible for carrying out the plan certifies that he will properly perform the erosion and sediment control measures included in the plan and will conform to the provisions of this article, and Title 62.1, Chapter 3.1, Article 2.4, of the Code of Virginia, including the applicable regulations. In addition, as a prerequisite to engaging in the land disturbing activity shown on the approved plan, the person responsible for carrying out the plan shall provide the name of a responsible land disturber, who will be in charge of and responsible for carrying out the land-disturbing activity, in accordance with the approved plan.
- (e) The plan shall be acted upon within thirty (30) days from receipt thereof by either approving said plan in writing or by disapproving said plan in writing and giving specific reasons for its disapproval. When the plan is determined to be inadequate, the appropriate city official, as set forth in paragraphs (b) through (d) above, shall specify such modifications, terms, and conditions that will permit approval of the plan. If no action is taken within thirty (30) days, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.

- (f) An approved plan may be changed or modified when:
 - (1) The inspection reveals that the plan is inadequate to satisfy applicable regulations; or
 - (2) The person responsible for carrying out the approved plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, the proposed amendments to the plan, consistent with the requirements of this article, are agreed to by the appropriate city official, or his designee, and the person responsible for carrying out the plan.
- (g) In order to prevent further erosion, the manager of the bureau of environmental services, or authorized designee, may require an erosion and sediment control plan for any land identified as an erosion impact area.
- (h) Upon approval, the erosion and sediment control plan shall become a permit document and shall be a condition precedent to issuing a building permit. The applicant's signing of the permit shall be prima facie evidence of his acceptance of such conditions.
- (i) Where land-disturbing activities involve lands under the jurisdiction of more than one local control program, an erosion and sediment control plan may, at the option of the applicant, be submitted to the soil and water conservation Board for review and approval rather than to each jurisdiction concerned.
- (j) When the land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission and approval of an erosion and sediment control plan shall be the responsibility of the owner.
- (k) Electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies and railroad companies shall file general erosion and sediment control specifications annually with the Board for review and written comments. The specifications shall apply to:

- (1) Construction, installation or maintenance of electric, natural gas and telephone utility lines, and pipelines; and;
- (2) Construction of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of the railroad company.

Individual approval of separate projects within subdivisions 1 and 2 of this subsection is not necessary when Board approved specifications are followed, however, projects included in subdivisions 1 and 2 must comply with Board approved specifications. Projects not included in subdivisions 1 and 2 of this subsection shall comply with the requirements of the City of Norfolk erosion and sediment control program.

- (l) State Agency projects are exempt from the provisions of this ordinance except as provided for in the Code of Virginia Sec. 62.1-44.15:56.

Section 5:- That Section 15-9 of the Norfolk City Code, 1979, is hereby amended and reordained to read as follows:

Sec. 15-9. Land-disturbing activity permit, plan review fees, bonding, etc.

- (a) A plan review and inspection fee as set by the city manager shall be paid to the appropriate city official, as set forth in section 15-8.
- (b) The appropriate city official, as set forth in section 15-8, prior to issuing a permit, may require any applicant to submit a reasonable performance bond with surety, cash bond, letter of credit, any combination thereof, or such other legal arrangement acceptable to the appropriate city official to ensure that measures could be taken by the City of Norfolk at the applicant's expense should he fail, after proper notice, within the time specified, to initiate or maintain appropriate conservation action. Upon such failure by the permittee, the City of Norfolk may collect from the permittee the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within sixty (60) days of the achievement of adequate stabilization of the land-disturbing activity, such bond, cash bond, letter of credit, or

other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated. These requirements are in addition to all other provisions relating to the issuance of such permits and are not intended to otherwise affect the requirements for such permits.

- (c) On and after July 1, 2014, no land disturbing activity permit or building permit shall be issued until the applicant provides proof of project registration and permit coverage under the Virginia Stormwater Management Program Construction General Permit for regulated land disturbing activities requiring permit coverage.

Section 6:- That this ordinance shall be in effect from and after July 1, 2014.